

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**DATED THIS THE 22<sup>nd</sup> DAY OF OCTOBER, 2007**

**PRESENT**  
**THE HON'BLE MR.JUSTICE V.G.SABHAHIT**  
**AND**  
**THE HON'BLE MR.JUSTICE JAWAD RAHIM**

**MFA No.111/2003 c/w. NFA.No.535/2003**

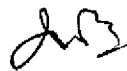
**IN MFA No.111/2003**  
**BETWEEN:**

1 SACHARIPET MUHAMMED S/O HUSSAIN BEARY  
AGED ABOUT 30 YEARS  
R/O SHAMEMA MANZIL  
POST SACHARIPETE VIA:MUNDKURU  
KARKALA TALUK. ....APPELLANT

(By Sri: DAYANAND S PATIL )

AND :

- 1 RAVINDRA S/O LATE M BABU  
AGE MAJOR MAROLI TRAVELS  
ULLAL  
MANGALORE
- 2 ORIENTAL INSURANCE CO LTD  
BY ITS MANAGER  
BEAUTY PLAZA  
BALMATTI ROAD  
MANGALORE
- 3 VISHWANATHA S/O BABU BHANDARY



AGE MAJOR  
NEAR KILLUR BUS STAND  
MITHABAGILU VILLAGE  
BELTHANGADY TALUK. ... RESPONDENTS

(By Sri : A N KRISHNA SWAMY FOR R1 & 2  
Sri.VISHWANATH FOR R3. )

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST  
THE JUDGMENT AND AWARD DATED: 23.9.2002 PASSED  
IN MVC NO. 1141/98 ON THE FILE OF THE PRL. DIST.  
JUDGE AND MEMBER, MACT., D.K., MANGALORE, PARTLY  
ALLOWING THE CLAIM PETITION FOR COMPENSATION  
AND SEEKING ENHANCEMENT OF COMPENSATION.

**IN MFA.No.538/2003  
BETWEEN:**

- 1 M RAVINDRA  
S/O LATE M.BABU  
MAJOR, MAROLI TRAVELS,  
ULLAL, MANGALORE
- 2 THE ORIENTAL INSURANCE CO LTD  
BEAUTY PLAZA, BALMATTI ROAD,  
MANGALORE, NOW R/BY ITS REGIONAL  
MANAGER, THE ORIENTAL INSURANCE CO LTD.,  
REGIONAL OFFICE, #44/45, LEO SHOPPING,  
COMPLEX, RESIDENCY ROAD CROSS,  
BANGALORE-25. ... APPELLANT

(By Sri : A N KRISHNA SWAMY )

AND :

- 1 SACHARIPET MUHAMMED  
S/O HUSSAIN BEARY, 31 YRS,  
R/AT SHAMEMA MANZIL,

*AS*

POST: SACHARIPETE,  
VIA: MUNDKURU,  
KARKALA TALUK.

... RESPONDENT

(By Sri : DAYANAND S PATIL FOR C/R )

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 23.9.02 PASSED IN MVC NO.1141/1998 ON THE FILE OF THE PRL.DISTRICT JUDGE & MEMBER, MACT, D.K., MANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION.

These two MFAs., coming on for hearing this day, JAWAD RAHIM J., delivered the following:

**JUDGMENT**

MFA.No.111/2003 is by the claimant and MFA.No.538/2003 is by the insurer, directed against the judgment in MVC.No.1141/98 passed by the MACT., D.K., Mangalore on 23.9.2002. While the claimant is dissatisfied with the grant, the owner and the insurer are seeking its reduction.

2. Both the appeals are heard and taken up for disposal by this common judgment. The genesis of the appeal is the motor accident on 17.1.98 involving scooter bearing No.CTA 8804 and bus bearing No.KA 19 8244. The

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claimant lodged complaint under Section 166 of Motor Vehicles Act contending that he was riding the scooter referred to above at a moderate speed, but the driver of the bus was reckless and rash in driving. When he reached Salmara of Karkala near Galaxy hall the driver of the bus lost control and hit against the scooter due to which he fell suffering injuries which affected his limb. He was immediately rushed to the Karkala Nursing Home and thereafter he was shifted to Dr.T.M.A.Pai Rotary hospital, Mangalore where he was in-patient from 17.1.1998 to 3.2.1998. After discharge, he was again under treatment at University Medical Center, Mangalore where treatment was administered to him to save his upper limb which was severely injures. The Medical Officers despite their relentless efforts could not avoid physical disability to the right limb. The claimant, contending that he was having a secured employment abroad with the fixed salary of 1500 souidi Riyals sought compensation towards loss of income as he could not continue his job and also for physical disability,



loss of amenities, medical expenses and incidentals. The claim was resisted by the Insurance Company and the owner contending that there was no rashness in the driving of the bus driver but the accident was result of neglect on the part of the claimant himself. On the evidence lead by the claimant, the Tribunal held that the rashness was in the driving of the bus and consequently held that the driver of the bus was responsible for cause of accident. There was nexus between the accident and the injury suffered by the claimant. Therefore the Tribunal held that the claimant is entitled to compensation. That finding is not assailed by the owner and the insurer but the quantum of compensation is questioned as disproportionate to the loss if any. In the circumstances, we are confining consideration in this appeal with regard to quantification of the compensation and not with regard to finding regarding negligence or involvement of the vehicles in question.



3. We have heard both sides in respect of their respective appeals.

4. The question that arises for our consideration is as to "Whether the quantification of compensation as done by the Tribunal in the impugned judgment is 'rational' and is 'just' compensation as required under the Act or does it need any enhancement or reduction?"

5. We are satisfied, on consideration of the reasoning assigned by the learned Member of the Tribunal, that even though Tribunal has awarded Rs.7,65,000/- the said award is on a lower side and needs enhancement. We have kept in mind the arguments of both sides with regard to the nature of grant. At the outset it needs to be mentioned that the avocation of the claimant as office boy in a foreign country has been established through the documentary evidence Ex.P4-salary certificate as also leave certificate and the passport and visa documents. All these documents do establish that the claimant was provided with a job by

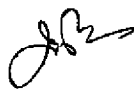


M/s.Khalid Swalah Abdul Rahimam trading and Contracting Establishment, Riyadh on a salary of 1500 Riyals and his tenure was periodically renewed and he was in service till 22.11.97. He was granted three months leave. This is evidenced by Ex.P58 and visa documents Ex.P54 indicates that he was also given free accommodation and food during his stay abroad. From it, the claimant had established his avocation. Though cross examination of claimant was done, the appellants in Appeal 538/2003 who are the owner, insurer has not been to salvage anything in the cross examination to dislodge the evidentiary values of these documents. Consequently we do not find any reason to take a different view from what the Tribunal has taken regarding avocation of the claimant. This therefore, presupposes the claimant was in a secured job abroad with salary which converted into Indian currency would be approximately Rs.16,500/- or at the minimum Rs.15,000/-.

The question now is, whether the claimant is still pursuing that avocation or lost that opportunity. The certificate issued

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by the company where he was serving indicates vide Ex.P58 that his job was still kept available for him, but due to disability after the accident he was unable to rejoin. It also therefore establishes that the claimant after sufferance of injuries in the motor accident has not been able to rejoin. Now the question is, whether the disability had diminished the opportunity of continuing the job? The Doctor who examined speaks of the fact that the claimant had suffered physical disability to an extent of 75% of the right upper limb. Though Doctor Muralidhar Nayak was cross examined he has maintained that the claimant has suffered physical disability which is of a permanent nature and there is weakness of proximal upper limb due to which he is unable to hold anything in his right hand and he cannot do his routine activities like putting on the shirt and therefore carrying out any work with that affected limb is impossible. Even the daily personal requirement of eating food is not possible with the right hand. This evidence tendered by Dr.Muralidhar Nayak has remained uncontroverted and we





do not find any reason to disbelieve the expert's opinion about the physical disability as a result of accidental injuries. Accepting his physical disability in relation to upper arm of 75% it would be appropriate to evaluate the physical disability of whole body atleast at 33%. This would therefore become the data for the purpose of evaluating pecuniary and non-pecuniary loss. The pecuniary loss has to be calculated on the basis of the earning of the injured, which on proved facts is shown to be atleast Ra.15,000/-. 1/3rd of it would be Ra.5,000/- pm. annually it would be Ra.60,000/-. This shall be the multiplicand. The multiplier is 15 depending upon the age of the claimant which is not in dispute. Therefore, towards loss of future income or earning capacity, the claimant is entitled to a sum of Ra.9,00,000/- (Rupees nine lakhs). As seen from the evidence on record and accepted by the Tribunal a sum of Rs.1,00,000/- has been awarded to the claimant towards medical expenses which we do not find needs any interference. Likewise, we see that the nature of injury suffered by the claimant is such that he had



to undergo pain and agony for a prolonged period of treatment at various hospitals. Rs.75,000/- under this head is also reasonable and we confirm the same. Towards loss of amenities, the claimant has been awarded Rs.50,000/-, we do not wish to interfere with the same. In the result, the claimant would be entitled to a sum of Rs.11,25,000/- (Rupees eleven lakhs twenty-five thousand only). Therefore, we conclude on reappraisal of evidence in the appeal preferred by the claimant that award has to be enhanced as indicated above in this order.

6. However, at this juncture the learned counsel appearing for the Insurance Company Sri.A.N.Krishnaswamy pointed out that the accident has occurred in the year 1998, the Tribunal has awarded interest at 9% p.a. He would contend that as the claimant is Indian National, there is no guarantee he would have settled abroad. All jobs abroad are generally temporary assignments. Hence if claimant had to return he would not have earned similar salary. In India the

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salary of the attender will not be more than three thousands. Thus, he seeks reduction in the rate of interest to ensure he is not over compensated. We see sufficient force in this contention and we accept that the rate of interest fixed by the Tribunal at 9% could be scaled down to 6% p.a.

Accordingly, the appeal preferred by the claimant shall stand allowed, likewise the appeal preferred by the Insurer is also partly allowed reducing the rate of interest at 6% p.a. Consequently, the judgment impugned in this appeal passed in MVC.No.1141/98 by the MACT, D.K., Mangalore dated 23.9.2002 is modified to the extent indicated above. The amount of compensation awarded is enhanced from Rs.7,65,000/- to Rs.11,25,000/- which shall carry interest at 6% from the date of petition till date of discharge. The amount of enhanced compensation including the balance if not discharged shall be discharged by the Insurance Company within eight weeks from now. Out of the enhanced compensation we direct that 50% with



proportionate interest shall be retained in FD initially for a period of five years with permission to the claimant to draw interest periodically. The balance amount of 50% shall be permitted to be withdrawn by the claimant. Rest of the conditions contained in the award are confirmed. In the circumstances, there is no order as to costs.

Sd/-  
Judge

Sd/-  
Judge

12/11/06